IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 421 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MAGANLAL MOHANLAL SHAH
Versus
STATE OF GUJARAT

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Appearance :
MR KB PUJARA for Appellant.
MS HANSA PUNANI, APP for Opponent.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 05/12/2007

ORAL JUDGMENT

1. This appeal arises out of a judgment and order dated 31st March 1997 rendered by learned Additional Sessions Judge, Palanpur, in Sessions Case No.18 of 1990.

2. Appellant herein was accused no.1, who was charged with having committed offences punishable under Sections 363, 366 of the Indian Penal Code. Learned Additional Sessions Judge convicted the appellant under both the charges and sentenced him to undergo rigorous imprisonment of two years and three years respectively and also pay fine of Rs.400/-.

3. Broadly stated the prosecution case is that the appellant had taken away one, Yogini, a minor girl from the custody of her parents with a promise of getting married. Complaint was lodged by the father of the girl. He was examined as P.W.2 at Exh.22. In his cross-examination, he stated that his daughter Yogini had run away. Pushpaben, P.W.3, Exh.24 was the mother of the girl. She stated that her daughter had climbed on a table and jumped over a wall of the veranda of the house. It can thus be seen that the girl had voluntarily left the house of her parents. About this, there is no manner of doubt. If one peruses the evidence of the girl herself, who was examined as P.W.13 at Exh.46, she stated that she was studying with the appellant in the same school and had, therefore, developed relations. She was called by the appellant on 9th September 1989. She accordingly jumped over the wall of the veranda. She was taken by the appellant in a jeep car and they went to Kanajia village. They stayed there at night in the house of the uncle of the appellant.

4. It can thus be seen that the girl had left the house on free will. It is also significant to note that there was no charge of having committed sexual intercourse on the girl levelled against the appellant. The medical evidence also suggested that the hymen of the girl was intact and otherwise also no charge under Section 376 was framed against the appellant.

5. From the evidence on record, though it can be seen that the girl had left her parent's house on a free will, she was barely 15 years of age. Date of birth recorded in her school records was brought on record. According to this date, she was less than 15 years of age. It is true that the date of birth record of school cannot form the sole basis for judging the age of the girl in criminal proceedings. However, it is also not the case of the appellant that the girl was aged more than 18 years. Ordinarily, therefore, when it is found that the girl was of tender age and not able to understand fully the implications of her actions, taking her out of the care of her legal guardians would constitute an offence punishable under Section 363 of the Indian Penal Code. In that view of the matter, from the available material on record, it cannot be said that conviction was not justified. However, there is one aspect of the matter which cannot be lost sight of. The appellant himself was aged about 16 years on the date of the incident. His date of birth was recorded as 1-6-1973 in school records. The incident took place on 9-9-1989. It can thus be seen that even the appellant, original accused no.1, was of extremely tender age and not able to fully understand the serious implications of his foolish actions.

6. It has come on record that after the incident took place, the girl had got married elsewhere. The incident took place way back in the year 1989. The appellant was a young boy of about 16 years at that time. Considering all these aspects of the matter, even if conviction can be upheld, he deserves to be given benefit of probation.

7. Under the circumstances, while upholding the conviction and sentence recorded by learned Additional Sessions Judge in the judgment under appeal, the appellant is given benefit of probation and, he shall,

therefore, not have to serve out the sentence. Appeal is disposed of accordingly.

(Akil Kureshi, J.)

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